

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**CHARLA CARPENTER**  
Claimant

VS.

**DILLON COMPANIES, INC.**  
Respondent  
Self-Insured

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Docket No. 219,216

**ORDER**

Claimant requested review of the preliminary hearing Order dated May 22, 1997, entered by Administrative Law Judge Jon L. Frobish.

**ISSUES**

The Administrative Law Judge denied claimant's request for benefits. Both parties have briefed and requested the Appeals Board to review the following issues:

- (1) Did claimant's work activities which she performed for the respondent in July and August 1996 aggravate a preexisting shoulder injury?
- (2) Did claimant provide respondent with timely notice of accident as required by K.S.A. 44-520?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

Claimant contends she initially injured her right shoulder in 1995 while working for the U. S. Postal Service. Claimant also contends she aggravated the shoulder injury when she briefly worked for the respondent making cinnamon rolls during the period of late July 1996 through her last day of work on August 21, 1996. Claimant testified she left respondent's employment because of increased shoulder symptoms caused by her work activities. She also testified she advised her assistant manager, Steve Sigle, when she terminated her employment that she had reinjured her shoulder while working for the respondent.

Respondent contends claimant failed to prove she reinjured her shoulder and also failed to prove she provided timely notice of accident as required by K.S.A. 44-520. In support of the latter contention, respondent presented Steve Sigle who reviewed his notes regarding the circumstances of claimant's termination and testified that claimant did not indicate she had either injured or aggravated her shoulder as a result of her working for the respondent.

At this juncture, claimant's claim for benefits hinges primarily upon her subjective complaints of pain and her allegations that her symptoms increased while working for the respondent. Claimant has not presented a medical opinion which either definitively states that the work she performed for respondent has aggravated her right shoulder or that she presently needs medical treatment as a result of that work. On the other hand, respondent introduced the most recent medical information, a letter from Thomas W. Kneidel, M.D., dated May 12, 1997, in which he writes it is dubious whether claimant has any type of physical problem at all.

Based upon the evidence submitted to date, the Appeals Board agrees with the Administrative Law Judge's conclusion that claimant has failed to prove it is more probably true than not that claimant has reinjured her right shoulder as a result of working for the respondent. Claimant terminated her employment with the U. S. Postal Service in January 1996 contending she could not work. After her short tenure with respondent, she again contends she cannot work. In the absence of persuasive medical evidence which establishes additional injury or aggravation as a result of her working for respondent, the claimant will be hard pressed to satisfy her burden of proof.

Because of the above finding, the notice issue is rendered moot.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated May 22, 1997, entered by Administrative Law Judge Jon L. Frobish should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 1997.

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BOARD MEMBER

c: Michael J. Unrein, Topeka, KS  
Scott J. Mann, Hutchinson, KS  
Jon L. Frobish, Administrative Law Judge  
Philip S. Harness, Director